

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Rick Olseen,

Complainant,

vs.

**FINDINGS OF FACT,
CONCLUSIONS AND
ORDER**

Bob Barrett and Barrett for
State Representative Committee,

Respondents.

On February 1, 2013, the above-entitled Fair Campaign Practices Complaint came before a Panel of three Administrative Law Judges: James E. LaFave (Presiding Judge), Barbara L. Neilson, and Kirsten Tate.

This matter was originally scheduled for an evidentiary hearing to be held on January 29, 2013. However, by agreement of the Parties, the matter was submitted to the Panel based on the underlying record, including the Complaint and attachments, the *Prima Facie* Determination, and subsequent correspondence from the Parties.¹ The Parties were given until January 29, 2013, to submit written argument on the issue of what penalty, if any, would be appropriate. The OAH record on this matter closed on January 29, 2013.

STATEMENT OF THE ISSUES

Did Respondents violate Minn. Stat. § 211B.06 by preparing and disseminating campaign material prior to the November 6, 2012, general election that stated, among other claims, that Rick Olseen did not serve on the Education committee while a state senator?

The Panel concludes that the Complainant has established that Respondents violated Minn. Stat. § 211B.06. The Panel concludes further that it is appropriate to assess Respondents a civil penalty in the amount of \$1,000.

Based on the record and proceedings herein, the undersigned panel of Administrative Law Judges makes the following:

¹ Mr. Olseen submitted eight proposed exhibits on January 22, 2013; Representative Barrett submitted a letter dated January 24, 2013; and Mr. Olseen submitted a letter dated January 26, 2013.

FINDINGS OF FACT

1. The Complainant, Rick Olseen, was the DFL endorsed candidate for the Minnesota House of Representatives District 32B seat in the November 6, 2012, general election.² Mr. Olseen is a former member of the Minnesota Senate.³

2. Respondent Bob Barrett was the incumbent and the Republican Party's endorsed candidate for the Minnesota House of Representatives District 32B in the November 6, 2012, general election. Barrett for State Representative Committee is the name of Mr. Barrett's campaign committee.

3. Approximately five days before the general election, the Respondents disseminated a campaign flyer to residents of House District 32B that was prepared by Mr. Barrett's campaign committee. The flyer favorably compared Mr. Barrett to Mr. Olseen and urged voters to re-elect Mr. Barrett as their state representative. In side-by-side columns, the flyer contrasted Mr. Barrett's values and accomplishments to those of Mr. Olseen (referred to on the flyer as "Bob's opponent"). In one comparison, the flyer stated the following:

Bob's opponent didn't serve on the Education committee while a state senator even though our schools need help.

In comparison, the flyer noted that Mr. Barrett currently serves on the House Education Reform committee.⁴

4. During the first two years of his tenure as a state senator (2007-2008), Mr. Olseen served on the Senate's Education Policy committee. He left the committee in January 2009 when it was combined with the Education Finance committee and membership on the combined committee was required to be reduced.⁵

5. Like all members of the Minnesota Senate, Mr. Olseen's committee memberships were listed on the state senate's and legislature's websites, as well as in the State's Legislative Manual, the Senate's Official Directory, and the Minnesota Legislative Reference Library's Legislator Record publication.⁶

6. Mr. Barrett defeated Mr. Olseen in the November 6, 2012, general election by a margin of 393 votes. Mr. Barrett received 10,644 votes (51%) and Mr. Olseen received 10,251 votes (49%).

² Minnesota House District 32B encompasses most of Chisago County and includes that cities of Lindstrom, Center City and North Branch.

³ He was first elected to the Minnesota Senate in 2006 to represent Senate District 17, which includes portions of Anoka, Chisago and Isanti Counties. He was defeated in his bid for re-election in 2010.

⁴ Copy of flyer attached to Complaint.

⁵ Complainant's submission dated January 26, 2013.

⁶ Complainant's submission received January 22, 2013, attachments 1-6.

Based upon the foregoing Findings of Fact, the undersigned Panel of Administrative Law Judges makes the following:

CONCLUSIONS

1. The Administrative Law Judge Panel is authorized to consider this matter pursuant to Minn. Stat. § 211B.35.

2. Minn. Stat. § 211B.01, subd. 2, defines “campaign material” to mean “any literature, publication, or material that is disseminated for the purpose of influencing voting at a primary or other election, except for news items or editorial comments by the news media.”

3. The campaign flyer prepared and disseminated by the Respondents is campaign material within the meaning of Minn. Stat. § 211B.01, subd. 2.

4. Minnesota Statutes § 211B.06, subd. 1, provides in part:

A person is guilty of a misdemeanor who intentionally participates in the preparation, [or] dissemination ... of ... campaign material with respect to the personal or political character or acts of a candidate ... that is designed or tends to elect, injure, promote, or defeat a candidate for nomination or election to a public office ..., that is false, and that the person knows is false or communicates to others with reckless disregard of whether it is false.

5. The burden of proving the allegation in the complaint is on the Complainant. The standard of proof of a violation of Minn. Stat. § 211B.06 is clear and convincing evidence.⁷

6. The Complainant has demonstrated by clear and convincing evidence that the Respondents violated Minn. Stat. § 211B.06. The Complainant established that the Respondents prepared and disseminated false campaign material regarding the political acts of candidate Rick Olseen with reckless disregard as to whether it was false.

7. It is appropriate to impose a civil penalty of \$1,000 against the Respondents for violating Minn. Stat. § 211B.06.

8. The attached Memorandum explains the reasons for these Conclusions and is incorporated by reference.

Based on the record herein, and for the reasons stated in the following Memorandum, the panel of Administrative Law Judges makes the following:

⁷ Minn. Stat. § 211B.32, subd. 4.

ORDER

IT IS ORDERED:

That having been found to have violated Minn. Stat. § 211B.06, Respondents Bob Barrett and Barrett for State Representative shall pay a civil penalty in the amount of \$1,000 by May 15, 2013.⁸

Dated: February 5, 2013

/s James E LaFave
JAMES E. LAFAVE
Presiding Administrative Law Judge

/s Barbara L. Neilson
BARBARA L. NEILSON
Administrative Law Judge

/s Kirsten Tate
KIRSTEN TATE
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 211B.36, subd. 5, this is the final decision in this case. Under Minn. Stat. § 211B.36, subd. 5, a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63 to 14.69.

MEMORANDUM

The facts in this case are not in dispute. The Respondents prepared and disseminated a campaign flyer that falsely stated that Rick Olseen did not serve on the Education committee while a member of the Minnesota Senate.

In his January 24, 2013, submission, Representative Barrett states that the inclusion of the factually false claim on the campaign flyer was an oversight due in part

⁸ The check should be made payable to "Treasurer, State of Minnesota" and sent to the Office of Administrative Hearings, P.O. Box 64620, St. Paul, MN 55164-0620.

to the state's legislative website, which Representative Barrett suggests was difficult to navigate. Representative Barrett asserts that the pre-election research he and his campaign committee members conducted did not "uncover" Mr. Olseen's Education committee membership. Mr. Barrett maintains that, prior to preparing the flyer, he and/or his campaign committee viewed the Senate Education Committee website and "other pages" and did not see Mr. Olseen's membership listed.

Representative Barrett further states that when he was made aware of the error on the flyer after the election, he conducted additional research on the newly revised state legislative website and was able to determine that Mr. Olseen served on the Senate Education Policy committee for two years beginning in 2007. According to Representative Barrett, the new legislative website, which was launched after the November 2012 election, makes historical committee membership much easier to find and includes "more robust" information.

Representative Barrett states that he regrets that he and his committee's pre-election research did not uncover Mr. Olseen's membership on the Senate Education Policy committee, but he maintains that the resulting factually false claim on the campaign flyer was an unintentional mistake.

The Panel finds that any difficulty Respondents experienced in navigating the state's former legislative website to verify Mr. Olseen's committee memberships does not excuse the inclusion of the inaccurate information in their campaign material. As Mr. Olseen pointed out, and Respondents did not dispute, legislative committee memberships are listed on many state government and political websites, and in numerous reference materials.⁹ Because Respondents made the specific claim that Mr. Olseen did not serve on an education committee while a member of the Senate, they are charged with knowing Mr. Olseen's committee memberships. By failing to adequately research Mr. Olseen's legislative record prior to communicating their assertion, Respondents acted with reckless disregard as to whether the committee membership claim on their flyer was false.

The Panel concludes that the Complainant has shown by clear and convincing evidence that the Respondents violated Minnesota Statutes § 211B.06 by preparing and disseminating a campaign flyer with a factually false statement concerning the political acts of Mr. Olseen that Respondents communicated with reckless disregard as to whether the claim was false.

In order to ensure consistency in the application of administrative penalties across types of violations of the Fair Campaign Practices Act, the OAH Panels use a "penalty matrix" to guide decision-making.¹⁰ The matrix categorizes violations based upon the willfulness of the misconduct and the impact of the violation upon voters. In this instance, the Panel concludes that the violation was negligent, not easily countered

⁹ See, Olseen's January 22, 2013, submission, exhibits 1-8.

¹⁰ See, Penalty Matrix (<http://mn.gov/oah/administrative-law/filing/fair-campaign/process/>); *Fine v. Bernstein*, 726 N.W.2d 137, 149-50 (Minn. App.), *review denied* (Minn. 2007).

given that it was disseminated about five days before the general election, and likely had some impact on voters. Representative Barrett himself stressed in his written submission that educational policy and finance issues were a “very important topic” to the voters of House District 32B. Specifically, Mr. Barrett asserted that membership on the Education Committee was of “vital importance” to voters because of the “tremendous funding issues affecting Chisago County schools,” including the necessity of one school district to revert to a four day school week in 2010 due to financial constraints.

The Panel finds that a civil penalty assessed against the Respondents in the amount of \$1,000 is appropriate in this case.

The Panel also finds troubling Representative Barrett’s suggestion that Mr. Olseen had improper motives in filing this campaign complaint and that he was “using public resources and this judicial process to obtain his personal goal.” Any individual has the right to file a complaint under the Fair Campaign Practices Act if they believe a person or committee has violated a provision of the Act. In this case, Mr. Olseen has established that Representative Barrett and his committee violated Minnesota Statutes § 211B.06 by disseminating false campaign material about him. Mr. Olseen’s complaint is grounded in law and fact and should not be viewed as an inappropriate use of public resources or this administrative process.

J.E.L., B.L.N., K.T.